

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

1. (Currently amended) A method for adjusting data modulation at a subscriber unit, comprising:

receiving data at a transmitter for transmission;

formatting the received data into packets for transmission, each packet having a particular type of encoding/data modulation;

appending the error check sequences;

transmitting the packets;

monitoring a return channel for receipt of an acknowledgment for each packet that that packet has been received;

retransmitting a an original or selectively modified packet at the transmitter, if an acknowledgment for that packet has not been received;

collecting retransmission statistics; and

adjusting each particular encoding/data modulation using the collected retransmission statistics; wherein if the collected retransmission statistics indicate a low number of retransmissions, a higher capacity encoding/data modulation scheme is selected as the particular encoding/data modulation and if the collected retransmission statistics indicate a high number of retransmissions, a lower

capacity encoding/data modulation scheme is selected as the particular encoding/data modulation.

2. (Original) The method of claim 1 wherein the particular type of encoding/data modulation is forward error correction (FEC).

3. (Original) The method of claim 2 wherein the packets are transmitted using an orthogonal frequency division multiple access (OFDMA) air interface and the FEC encoding/data modulation adjusting is performed in addition to selective nulling of subchannels in an OFDMA set.

4. (Original) The method of claim 1 wherein the packets are transmitted using a single carrier having a frequency domain equalization (SC-FDE) air interface.

5. (Previously presented) The method of claim 1 wherein the return channel is a fast feedback channel when the packets are transmitted using a code division multiple access (CDMA) air interface.

6. (Original) The method of claim 1 further comprising:  
identifying a packet as having an unacceptable error rate responsive to receipt of a negative acknowledgment.

7. (Currently amended) A method for adjusting data modulation at a subscriber, comprising:

formatting data into packets for transmission over a wireless air interface;

receiving packets of data over said air interface, each packet having a particular encoding/data modulation;

for each received packet, generating and transmitting a positive acknowledgment at the physical layer of said air interface when a received packet has an acceptable error rate;

collecting retransmission statistics; wherein if the collected retransmission statistics indicate a low number of retransmissions, a higher capacity encoding/data modulation scheme is selected as the particular encoding/data modulation and if the collected retransmission statistics indicate a high number of retransmissions, a lower capacity encoding/data modulation scheme is selected as the particular encoding/data modulation; and

combining a received packet with a retransmitted original or selectively modified packet.

8. (Previously presented) The method of claim 7 wherein the positive acknowledgments are transmitted on a fast feedback channel when said air interface using a code division multiple access (CDMA).

9. (Original) The method of claim 7 further comprising transmitting a negative acknowledgment if that packet has an unacceptable error rate.